Division of Plessey Materials Corporation, Plessey Micro Science, a wholly owned subsidiary of Plessey Inc. *and* General Warehouse, Cannery and Food Process Workers Union, Local 655, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Eleanor Curiel, Darlene Wilson, Debra Williams, Stephanie Henry, Dora Costa, Maudie Gabriel, Emma Taber, Catherine M. Crusoe, James F. Bailey, Katherine Adams. Cases 32-CA-2589, 32-CA-2707, 32-CA-2619-1, 32-CA-2619-2, 32-CA-2619-3, 32-CA-2619-4, 32-CA-2619-5, 32-CA-2619-6, 32-CA-2619-7, 32-CA-2619-8, 32-CA-2619-9, and 32-CA-2628

September 21, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On June 16, 1981, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, General Counsel filed limited exceptions and a supporting brief, and Respondent filed limited cross-exceptions and an answering brief in support of the Administrative Law Judge's Decision and in support of its cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[1]

The Administrative Law Judge found that Respondent discriminated against Nestor Gragasin and Elmer Marmaradlo when it laid them off while retaining two less senior employees in pre-etch positions for which Gragasin and Marmaradlo were qualified. It appears that he thereby credited Respondent's contention, as evidenced in its Exhibit 94, as to the number and type of jobs available on the day shift at the time of layoff; it thus appears that five positions were available in the pre-etch department. The Administrative Law Judge mistakenly found, however, that Gragasin and Marmaradlo were senior to Pearlie Marron, who was retained in pre-etch. In fact, Marron was senior to both, as were all the employees retained in pre-etch but one: Mary McDougald. Therefore we find that Respondent discriminated unlawfully in its selection for that *one* position, and we will order reinstatement for only one discriminatee—Gragasin or Marmaradlo.[2] We are unable to determine on this record which of those two had greater seniority, as both were hired the same day.[3] That will be determined at the compliance stage of this proceeding.[4]

[1] Pursuant to our decision in *Sterling Sugars, Inc.*, 261 NLRB 472 (1982), we shall order Respondent to expunge from its records all references to the discriminatory layoffs found herein.

[2] Member Fanning agrees with the majority decision, except that he notes several deviations from Respondent's stated formula for layoff, in addition to the two instances of discrimination found by the Administrative Law Judge. Respondent's witnesses testified that employees were laid off in reverse order of plant seniority, contingent on an employee's having at least 8 hours of experience working in a department where a day-shift job was available. In several instances employees with greater plant seniority were retained in a department where employees with greater departmental experience were laid off. The Administrative Law Judge's analysis completely ignores this admitted fact.

Yet, the following layoff selections cannot be explained by Respondent's formula. Both *Dora Costa* and *Kathy Adams*, known union sympathizers, had experience in the print/develop department, and each had greater seniority than other swing-shift employees given positions in that department. Emma Taber, a known union sympathizer, had experience in quality control, and had greater seniority than Nellie Sarmiento, who was retained on the day shift in quality control. *Dok Oh*, who had been a process operator on the swing shift and who was not known as a union sympathizer, was given a janitor's job on the swing shift, while several prounion employees senior to him were laid off. The Administrative Law Judge found that Maude Gabriel was also given a janitor's job on the swing shift, but he did not address testimony that another such job was offered to Dora Costa. It thus appears that the availability of janitor jobs should be determined at the compliance stage of this proceeding. In sum, Member Fanning would find additional unlawful discrimination in Respondent's selection of employees for two positions in print/develop, one position in quality control, and at least one janitor's position on the swing shift—that given Dok Oh.

Member Fanning also notes that besides Gragasin and Marmaradlo, three other alleged discriminatees known to Respondent as union sympathizers—Ralph Dori, Kathy Adams, and Eleanor Curiel—were laid off although they had experience in pre-etch and greater seniority than Mary McDougald, who was given a pre-etch job. In that sense they are also discriminatees and conceivably suffered losses as a result. See *Fibreboard Paper Products Corporation*, 180 NLRB 142, 146 (1969); *Local 367, International Brotherhood of Electrical Workers (Penn Del-Jersey Chapter of the NECA)*, 230 NLRB 86, fn. 1 (1977). Member Fanning would leave to compliance the question of the nature and extent of losses suffered by these employees as a result of Respondent's discrimination in selection for retention in pre-etch positions.

[3] Respondent's seniority list indicates Gragasin is senior to Marmaradlo despite their identical hiring date. Chairman Van de Water would, therefore, find Gragasin to be the senior employee of the two, and order him reinstated.

[4] The majority does not accept Member Fanning's contention that Respondent claims to have applied its layoff selection formula in an unwavering and purely mechanical order. The Administrative Law Judge indicates in his Decision that Burton instructed Mills to lay off employees based on "considerations which were normally found in collective bargaining contracts—i.e., length of service and/or relative skill. This was manifested in the employer's phrase, 'capability.'" The Administrative Law Judge further found that although the "factors" used to determine layoffs included length of service with Respondent and length of time in the particular department, "[t]his was tempered on occasion by questions of industrial injury or illness, attendance and her [Silva's] subjective view of employee attitude." The Administrative Law Judge also finds, "For the most part, Respondent did utilize objective criteria for the retention of employees." Thus, we do not find that a "deviation" from a strict application of a "seniority and 8 hours experience" rule necessarily indicates an unlawful motive. Respondent, in fact, has presented additional factors in individual cases, as set forth in the Administrative Law Judge's Decision, supporting its "deviation" from what would be a mechanical seniority and experience formula. The Administrative Law Judge and majority have accepted those explanations except as otherwise indicated herein.

In ordering Respondent to reinstate one discriminatee, "dismissing if necessary any employee with less seniority [in a position for which the discriminatee is qualified]," we emphasize that the number of discriminatees found herein is dependent on the number of jobs available. Under this Order, in view of Respondent's stated formula for layoff, Respondent may not lawfully retain any employee junior in seniority to another employee, qualified to perform the same job, who remains on layoff.[5] Cf. *Nelson Filter, A Division of Nelson Industries Inc.*, 255 NLRB 1080, 1081, fn. 8 (1981), where the Board ordered reinstatement of strikers in the context of an asserted diminution of available positions.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Division of Plessey Materials Corporation, Plessey Micro Science, a wholly owned subsidiary of Plessey Inc., Mountain View, California, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Promptly offer Nestor Gragasin or Elmer Marmaradlo, whoever is determined to be senior at the compliance stage of this proceeding, a position for which he is qualified, dismissing if necessary any employee with less seniority in such a position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole, with interest, for loss of earnings and other benefits he may have suffered as a result of the discrimination against him, in the manner set forth in the Decision above."

2. Add the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from the records of each discriminatee found herein any and all written reports, notations, or memoranda reflecting the discrimination against him, and notify him in writing that this has been done and that evidence of this unlawful discrimination will not be used as a basis for future discipline against him."

3. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the complaint allegations not specifically found herein be, and they hereby are, dismissed.

[5] Chairman Van de Water finds it unnecessary to anticipate a discriminatory recall by Respondent *en futuro*, and thus would not provide therefor in the Order herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten to discharge employees because they may choose to have a union represent them.

WE WILL NOT threaten employees with the loss of any employment-related benefits in the event they select General Warehouse, Cannery and Food Process Workers Union, Local 655, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other union, to represent them.

WE WILL NOT discharge or otherwise discriminate in regard to the hire or tenure of employees because they engage in union or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL promptly offer to reinstate either Nestor Gragasin or Elmer Marmaradlo, whoever is determined in the Board's compliance proceeding to be senior, to a job for which he is qualified, dismissing if necessaryany employee with less seniority in such a position, and WE WILL make him whole for any loss of pay he may have suffered by reason of our discrimination against him, together with interest thereon.

WE WILL expunge from the records of each employee found to have been discriminated against any and all written reports, notations, or memoranda reflecting the discrimination

against him, and WE WILL notify him in writing that this has been done and that evidence of the unlawful discrimination will not be used as a basis for future discipline against him.

DIVISION OF PLESSEY MATERIALS CORPORATION, PLESSEY MICRO SCIENCE, A WHOLLY OWNED SUBSIDIARY OF PLESSEY INC.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: This case was heard before me in Oakland, California, beginning on October 27 through November 18, 1980,[1] pursuant to two complaints issued by the Regional Director for Region 32 for the National Labor Relations Board on April 29 and July 18, and which are based on separate charges filed by General Warehouse, Cannery and Food Process Workers Union, Local 655, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union), and nine individuals on March 25 and 31 and May 6 (later amended). The complaints allege that Plessey Micro Science, Division of Plessey Materials Corporation, a wholly owned subsidiary of Plessey Inc. (herein called Respondent), has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).

Issues

The two principal issues are (1) whether Respondent committed various independent violations of Section 8(a)(1), particularly scrutinizing conduct by Rosemary Haro, a leadperson, whose supervisory and/or agency status is in dispute; and (2) whether Respondent, on March 28, violated Section 8(a)(3) by shutting down its swing shift, thereby discharging approximately 20 named employees and a supervisor.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS

Respondent admits it is a New York corporation engaged in the chemical milling manufacturing business and having a plant located in Mountain View, California. It further admits that during the past year, in the course and conduct of its business it has sold and sent goods and materials valued in excess of $50,000 to customers outside California. Accordingly, it admits, and I find, that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Participants*

Respondent's Mountain View, California, plant is engaged in the manufacture of lead frames which are metallic supporters for electronic "chips." The frames are utilized by other manufacturers as components for their own products. Respondent is one of two companies, nationally, which utilize the chemical milling process to produce lead frames. Chemical milling involves a photo-resist etching process as opposed to a stamping process which requires the fabrication of a die. Chemical milling is more flexible, obtains greater precision, and is far less expensive than stamping.

Prior to late 1978, Respondent, at least, and probably its principal competitor, Koltron, utilized a "solvent" photo-resist process. The solvent is a chemical and petroleum distillate which is sensitive to light. The metal frames were coated with the photo-resist, placed in a glass or plastic "sandwich" containing the image of the frame to be manufactured, exposed to light, baked and developed, and then bathed in acid to etch the product. In late 1978, Respondent began investigating conversion to a cheaper and less toxic photo-resist manufactured by Norland Products located on the east coast. Norland's "aqueous" photo-resist is a proprietary product and, although known to be made of fish byproducts, and to be similar to fish glue, its exact formula is unknown to anyone other than Norland. Aside from the cost advantages which are significant, the aqueous photo-resist is easily disposable in public sewers and causes no air pollution difficulties. In contrast, the solvent photo-resist creates toxic wastes and offensive air-borne odors drawing complaints from the light industry and residential neighborhood adjacent to Respondent's plant.

Between late 1978 and early 1980, Respondent attempted to convert from the solvent to the aqueous process but the changeover occurred only in fits and starts due to the inability of Respondent to control the quality of the aqueous resist. This will be described more fully below.

In the midst of the conversion, in February 1980, the Union filed petition for a representation election among Respondent's employees. The organizing drive continued until April 25 when the Regional Director ordered a scheduled election postponed until resolution of the instant unfair labor practice charges. The election had been ordered by the Acting Regional Director's Decision and Direction of Election of March 19. On March 20 Respondent, which had previously operated on a two-shift basis, decided to shut down its swing shift. That decision was implemented on Friday, March 28. At that time ap-

[1] All dates herein refer to 1980, unless otherwise indicated.

proximately 20 employees were laid off, while 17 others were transferred to a beefed-up day shift.

During this period, Respondent's general manager was Phil Burton who until December 1978 had been comptroller. Its production manager was Ed Monteiro, who had overall responsibility for production on both the day and the swing shifts. Night-shift production manager, Linda Silva, reported to him as did the day-shift manager, Chuck Johnson.[2] Randy McMills was Respondent's personnel manager; he reported directly to Burton. During the union organizing campaign, Respondent's parent corporation, Plessey Inc., assigned Leonard Leimgruber, its director of industrial relations, to handle the representation hearing and to assist Burton with the Company's response.

Also reporting directly to Burton was the manager of the engineering staff; in late 1978 that individual was Ron Hull. Hull resigned in February 1979. When Hull resigned, Production Manager Dave Moore, who had an engineering background, became the chief engineer and Monteiro became production manager. In September 1979, Moore also left. His replacement was Bill Winkle who was later hired from an outside company.

Beneath the production managers were department or "working" supervisors. Because the swing shift consisted of fewer people, it did not always have a supervisor for each department as did the day shift. Most of these departments also had leadpersons on each shift. The General Counsel has alleged that one of the department supervisors, Carolyn Battle, was illegally discharged; he also alleges that one of the leadpersons, Rosemary Haro, was either a supervisor or agent of Respondent. Battle was a supervisor in the print and development department. Haro became one of the two leadpersons in the plating department in September 1979. However, because she was expert in quality control and repairing the sandwiches, she was assigned to the "library" (an adjunct of print and develop) for much of the time between September and the third week in February 1980. She also had an ear problem which apparently discouraged her from working near the plating tanks. Beginning February 25 she was off work for 3-1/2 weeks for ear surgery. She returned on March 20 and assumed full duties as leadperson in silver plating. Also in the plating department was another leadperson, Kathy Adams, who handled the gold plating line. Adams is the victim of certain conduct alleged to be unlawful. In charge of the entire plating department for the swing shift was Supervisor Edith Bednarczyk.

Under Battle in the print and development department was leadperson Mary Portteus, while the pre-etch department had only a leadperson, Joe Hotchkiss. Battle kept an eye on that department as well as on the stripping department and the aqueous room, though Silva had, of necessity, posted herself there.[3]

[2] Johnson quit during the first week of March. When the swing shift was eliminated in late March, Silva was appointed Johnson's replacement.

[3] Battle's pre-etch responsibility was primarily with the solvent line, not with aqueous.

B. *Authority of Leadpersons, Including Rosemary Haro*

According to Randy McMills, the personnel manager, the salary schedule of individuals in the plant roughly follows a percentage differential. He says that supervisors, leadpersons, and production employees are all hourly paid. A base pay (allowing for longevity is set for production employees. Leadpersons receive approximately 10 percent more than the base pay, while supervisors receive 20 percent more than the base.

Monteiro testified when Silva became the night-shift manager he told her what the leadperson's duties were. He said they did not have hire and fire authority nor could they discipline employees. He also said their duties were primarily to see that work was being done and to train new employees. He said he never told her that leadpersons had the authority to evaluate employees; that duty rested with the supervisor and the manager. He testified that leadpersons had no authority to grant time off, approve timecards, or transfer employees around the plant, even on a temporary basis. Time off questions and timecard approval were to be handled by the supervisors and employee transfers by Silva herself. He testified that in the latter months of 1979 some matters came to his attention which required the release of memos clarifying the authority of various individuals on the night shift. On September 24, he issued a memo to manufacturing supervisors, for both shifts, reiterating the importance of employees being at their work stations at starting time. On November 26 he issued another memo to all personnel telling them not to line up at the timeclock before quitting time. And, on December 20, he issued a memo stating that manufacturing, quality-control, and stores personnel were subject to the managerial responsibility of Silva, while maintenance, janitorial, and security personnel were the responsibility of Ed Culp.

Monteiro explained that, to enforce these policies, leadpersons had the authority to tell employees to stay at their work stations. He recalled an incident involving the plating crew shortly after Haro had been appointed silver leadperson. Haro had told the employees to "stay off the wall"—meaning that they were to stand closer to the rectifiers so they could read the dials. The crew questioned Haro's authority to tell them that and Monteiro said that he told them Haro had the right as leadperson to tell them what work to do and keep busy. However, he said, if the employee refused to respond to such a direction, the leadperson's only authority was to report the matter to the supervisor.

Silva testified that leadpersons also had the authority to tell the employee to what job he or she was initially assigned (although in most departments a periodic rotation system then went into effect) and that the leadperson also had the authority to tell employees to "stop fooling around" and to get back to work. In this regard there were several instances involving Haro's exercise of the authority to tell someone to return to work. One of the occasions occurred early in Haro's tenure as a leadperson. An employee named McIntyre was habitually late in returning from breaks and liked to engage in horseplay. When McIntyre did not respond to Haro s admo-

nitions, she reported the matter to Silva who resolved the problem.

Haro testified that Silva had told all the leadpersons to be sure that employees returned to work from their breaks on time. That occurred during a meeting which Silva conducted in January with Haro, Portteus, Battle, Hotchkiss, and Adams. The conversation was the result of an incident involving Mary Gabriel[4] and others who had lined up early at the timeclock. Haro had told Gabriel to get back to work but Gabriel "got huffy" and complained to Silva. Silva, however, supported Haro. To further clarify matters Silva called the meeting of leadpersons and supervisors.

As noted above, Haro often worked in the library next to the print and develop department. One evening stripping department employee, Eddie Sucgang, passed through that department on his way to the restroom. He engaged in a lengthy conversation with an employee there. When Haro noticed she directed him to leave and to stop disrupting the work of others.[5]

Based on the foregoing, I conclude that neither Haro nor other persons employed as leadperson by Respondent are supervisors within the meaning of Section 2(11) of the Act. They have no authority other than to see to it that the work work in a timely way or to cease engaging in horseplay or timewasting is simply an extension of their responsibility to make certain that the work routine is not disrupted. They have to authority to exercise independent judgment and all matters of a personnel nature must be routed to the supervisor or the production manager. *Maremont Corporation*, 239 NLRB 240 (1978).

C. *Interference, Restraint, and Coercion*

The two complaints allege that Respondent, through various individuals, engaged in some 23 independent violations of Section 8(a)(1) of the Act. At the hearing the General Counsel withdrew or sought dismissal of five of those allegations.[6] The principal actors involved in these allegations are Silva, Monteiro, and Haro, although Personnel Manager McMills is allegedly involved in one incldent and Day Supervisor Jone Stevenson is involved in two.

For organizational purposes, I shall deal with the allegations against each of the supposed wrongdoers.

Linda Silva

1. The complaint alleges that on an unknown date in early February, night-shift Manager Silva threatened employees with closing the plant if the Union won the representation election. The General Counsel's evidence in support of this allegation is the testimony of pre-etch employee, Catherine Crusoe. She testified that in late February she was in the employee lounge (also referred to as the cafeteria or lunchroom) at or about 4:15 p.m. Other individuals who were also in the lunchroom were employees Dora Costa, Ron and Shirley Amorfini, leadpersons Haro and Portteus, and Manager Silva. Those individuals were sitting together while Crusoe was at a nearby table. Crusoe overheard Silva say to those seated at her table that it was her opinion that Respondent was "to small" for a union and if the Union came to the plant it would have to shut down. Crusoe said Silva was speaking principally to Portteus and Haro. She heard nothing further of the conversation. Both Portteus and Haro deny Silva ever said that the plant would close if the Union came in and Silva herself testified that the only time she ever heard that topic was when employees spoke about it among themselves. She denies making any such statement as attributed to her by Crusoe.

The General Counsel argues that Silva's denial should not be credited because she later wore antiunion T-shirts.[7] While I am not persuaded that Silva is totally innocent of antiunion activities or sentiments, neither am I persuaded that the General Counsel has proven by a preponderance of evidence that the incident occurred as Crusoe testified. First, Crusoe was an eavesdropper who only claims to have heard one statement in a conversation. Second, she lacked information about her own job which she should easily have known. She was a roller-coater operator (the machine which rolled the photoresist onto the plates) but had no idea what the material's purpose was even though she had been employed since October. Her lack of knowledge here suggests a perception disability. Furthermore, Respondent's evidence corroborating the denial is significant. Taking all these factors together, I conclude that the General Counsel has failed to prove the allegation. It should be dismissed.

2. It is also claimed that Silva in early March made a second threat to close the plant. The General Counsel's evidence is the testimony of print and develop employees Eleanor Curiel and Stephanie Henry. According to Curiel, sometime in mid-March Silva came into their department. Curiel looked at her and remarked that Silva appeared tired. Silva replied she had been working a lot of overtime and complained that Respondent could not afford to hire decent engineers, but the employees were talking about getting $8 or $9 per hour. Curiel suggested discharging some of the engineers in order to get two good ones. Then Curiel said she would be satisfied with $1.50 more and she knew the Union would have reasonable people negotiating; surely they would not ask for $8 or $9 per hour. At that point, Henry joined the two and remarked that Respondent had made $80 million the year before. Curiel remembered Silva appeared startled at Henry's claim, but Curiel said she left the conversation and heard no more.

Henry testified she had heard Silva make a remark about being tired and that Respondent could not afford good technicians. Then she recalled Silva went on to say

[4] Not to be confused with Maudie Gabriel, Mary's mother.

[5] Haro says she has observed leadpersons Adams and Portteus give similar directions to employees. Neither of them gave contrary testimony.

[6] In Case 32-CA-2707, the withdrawn allegations are pars. 6(a), 7(a), and (b); in the consolidated complaint, Case 32-CA-2589, et al., they are paras. 6(h) and (q). By brief, the General Counsel moves to dismiss para. 6(m); the motion is granted.

[7] Silva admittedly wore T-shirts containing two different slogans. One said, "Bloody Hell—No Union." The "Bloody Hell" phrase was a pet term used by Monteiro in other contexts and was believed to be a readily recognizable joke. The second shirt Silva wore pictured Mickey Mouse "flipping the bird" with the phrase, "Hey, Union!" It was a modification of the "Hey, Iran!" shirt which was popular during the Iran crisis. Contrary to the General Counsel's assertion, Silva did not wear a "— the Union" T-shirt.

that if the Union got in the Company would close down. At that point, according to Henry, Silva said she (Silva) had better "shut up" before she said more and got herself into trouble. Henry remembered Curiel then saying she would be happy with $1.50 more instead of the $9 or $10 that people felt the Union would get them. It should be noted that Curiel did not corroborate Henry's version of the threat to close the plant, even though under Henry's version Curiel had not yet left the conversation.

Silva said that when Curiel remarked that she looked tired, she replied that she was and did not feel well and was upset over the "reject rate."[8] Curiel remarked that the night shift needed an engineer; Silva rejoined that it needed an "Einstein"; the shift was "working for nothing"—meaning that it was producing profitably. At that point, according to Silva, Henry came over and said "that the Company had made $80 million during the last year; couldn't it afford an engineer?" Silva said she was shocked, did not respond, and walked away. Silva denies the Union was ever mentioned in the conversation and denied she mentioned closing the plant. She also says there was no discussion regarding how much the employees would make if the Union came in.

Silva testified that on another occasion she heard a janitor named Romero talking to the print crew, including Curiel, Henry, Costa, and Portteus, telling them that they could make $8 or $9 per hour if they joined the Union. She said she made no comment about Romero's remark because she did not know. During that conversation no one said what salary increase would satisfy them and there was no discussion of the plant closing; neither was there any discussion about whether the Company could afford to pay $8 or $9 per hour.

The versions of all three are inconsistent. Both Henry and Curiel recall the reference to $8 or $9 per hour; Silva said that occurred in a different conversation. Yet, Curiel could not testify to a threat of closure. That might be explained by her testimony that she left the conversation, but under Henry's version, she had not. Once again, weighing the various factors, including Silva's fatigue caused by frustration with the aqueous process, her probable union animus, and the lack of corroboration which should have occurred, I credit Silva's denial. I conclude that the General Counsel has failed to prove the allegation by evidentiary preponderance. I recommend that it be dismissed.

3. The next allegation against Silva is her alleged threat in early or mid-March to lay off employees who supported the Union. Library employee Ruth Charlotte testified that 2 or 3 weeks before the March 28 layoff, she told leadperson Mary Portteus that she had decided she did not wish to vote in the upcoming election as she did not want anything to do with it. About an hour or two later, Silva came to her saying she had heard Charlotte did not want to vote. Charlotte replied it was true and Silva asked why not. Charlotte told her she did not want problems with either the Union or the Company and that she had heard that people had been laid off by the Company if they were for the Union. She said Silva did not reply so she asked Silva if it was true. Charlotte remembered Silva saying, "The Company cannot have anybody against it." Charlotte asked if being for the Union was being against the Company and Silva replied, "Yes." Charlotte testified she became scared she would be laid off so she told Silva that she had signed a union authorization card but had then talked to her husband who had told her to foresake involvement altogether. To that Charlotte recalled that Silva told her signing a card did not mean that much, but "Would you vote?" Charlotte replied, "If the company wanted me to vote . . . I would just vote.

On cross-examination, Charlotte appeared confused, although her direct was not as clear as it might have been either. Perhaps some of her confusion is because she is not fully fluent in English. On cross-examination, she testified Silva told her that her decision not to vote "would be against the company." Charlotte said that remark made no sense to her. Silva then asked if Randy (McMills) could perauade her. Charlotte refused the offer, saying "No, he is a liar."

Silva testified that she indeed spoke to Charlotte in the library because Portteus had reported that Charlotte did not wish to vote. She said she explained that Charlotte was involved no matter what and that she should vote either "for or against." She said she never discussed layoffs with Charlotte and Charlotte never mentioned any rumors relating to layoffs. She denied telling Charlotte that Respondent did not want people working for it who were against it.

In this instance, despite Charlotte's testimonial shortcomings, I believe she honestly attempted to describe the conversation. The fact that she has difficulty in English is not enough to cause me to reject the accuracy of her recollection. Moreover, Charlotte's description of Silva's conduct is consistent with my perception of Silva as an individual who was opposed to union representation, but who would not engage in direct restraint or coercion. She preferred the subtle route or one which was subject to diffusion, such as the perceived humor seen in the T-shirts she later elected to wear. Thus, I credit Charlotte's description over Silva's denial and find that Silva stated that being for the Union was being against the Company and that the Company did not want employees working for it "who are against it." That constitutes a definite attempt to coercively influence Charlotte's vote by suggesting that her job would be jeopardized if she somehow was perceived as being "against the company." Accordingly, I find the comment to have violated Section 8(a)(1) of the Act.

4. Three complaint paragraphs involve the testimony of leadperson Katherine Adams. Adams had been the leadperson on the gold plating line until approximately December 1979. At approximately that time she became the leadperson in the pre-etch department, reporting to Supervisor Carolyn Battle. According to Adams, approximately a week before the March 28 layoff, she, Portteus, and Silva had occasion to have an early breakfast at Lyon's Restaurant near the plant. They had worked approximately 2 hours of overtime and had arrived at the restaurant about 3:15 a.m. During their con-

[8] At this time there is little dispute that the aqueous conversion was causing a high rate of rejects as opposed to the well-established solvent process.

versation, Adams testified that Silva said she had learned from General Manager Phil Burton "that if the shop went Union and there was any trouble they would probably shut the shop down." On cross-examination, she added Silva said Burton had referred to the fact that Respondent was owned by a British company and if there was any trouble they would shut it down and take a tax loss.

Silva recalled the restaurant conversation reasonably well. She remembers Adams asking Portteus if she had talked to Rosemary Haro, who had recently had her ear operation, to inquire about her condition. Portteus replied she had not. Silva said there was no discussion of Burton or what would happen if the Union did come in. She denied there was any discussion about Respondent's status as a British corporation which would close the plant to take a tax loss. Portteus corroborates Silva's denial and says that she would have remembered if there had been a discussion of the plant closing down.[9]

On Wednesday of the same week, according to Adams, she had occasion to be in the lunchroom with Silva, Portteus, and Haro. Adams remembered Silva discussing prounion T-shirts worn by day-shift employees saying she had discussed she shirts with higher management who had informed her that slogans were permitted so long as they were not derogatory. Adams said shortly thereafter Silva picked up the telephone in the lunchroom and she overheard Silva say she wished to order T-shirts, asking if they could be picked up the next day.

Silva denied any involvement whatsoever in ordering the T-shirts. She said that one morning while she was in the cafeteria with Haro, Ron and Shirley Amorfini, Portteus, and Adams, that Haro remarked that she had thought of a "cute slogan"—"Bloody Hello—No Union," mimicking Monterio. Silva said everyone laughed and Haro asked if they wanted one. When people replied they did, Haro asked for their sizes. Haro asked Adams if she wanted one; Adams replied "yes." Silva denied buying the T-shirts and also denies making any phone call from the cafeteria to order them.[10]

Portteus confirmed Silva's testimony. She said the idea occurred when a group sitting at the table saw some prounion T-shirts. She thought it was Haro's idea to get some antiunion ones. She knew that the "Bloody Hell" language was Haro's idea. She also remembered Haro saying she would get the shirts and asking for sizes. According to both Silva and Portteus, within a day or two, Haro appeared at the plant with a bag of "Bloody Hell" T-shirts.

Haro, too, testified that the antiunion T-shirts were her idea and that she was responsible for obtaining them. She said she got the sizes from all of those who said they wanted one and then purchased the shirts from a T-shirt shop on the following day. She said it took about an hour for them to be prepared. She also said that a day later she purchased the Mickey Mouse shirt specifically for Silva, aware that Silva "really loved" Mickey Mouse. She also purchased one for herself with the phrase "Bullshit on the Union."

In support of her testimony, she produced two sales receipts from the shirt shop. She said she was not reimbursed by the Company for her purchases, although Silva offered to pay for the two she received. Haro declined Silva's offer.

Haro's admission, together with Silva's and Portteus' testimony that it was Haro's decision to purchase the shirts seriously damaged Adams' testimony that she observed Silva telephonically order the shirts from the cafeteria. In view of the consistent testimony of Silva, Portteus, and Haro, partially supported by the sales receipts, I conclude that Adams' testimony has been discredited with respect to the T-shirt matter and I shall not rely upon it. Furthermore, since she has been untruthful with regard to that matter, I shall not credit her testimony with respect to the Lyon's Restaurant conversation either. With regard to the Lyon's Restaurant issue, I am impressed by the fact that Silva's and Portteus' testimony is mutually harmonious. Accordingly, paragraph 6(1) should be dismissed.

Similarly, I shall recommend that paragraph 6(n) be dismissed. That paragraph alleges that Haro and Silva interrogated Adams regarding her union sentiments by asking her to wear the "Bloody Hell" T-shirt. Adams testified that after she heard Silva make the telephone call to order the shirts, she spoke to Haro in the hallway. Haro asked her if she would be willing to wear a "Bloody Hell" T-shirt. Adams replied she probably would. On the following day, according to Adams, Haro came to work with the T-shirts. Silva, not Haro, gave Adams her shirt in a paper bag. Adams thanked her but declined to wear it, saying the chemicals from pre-etch would stain it. Adams said Silva later asked her to return it and she did so. Adams then testified that prior to the time she decided not to wear the shirt she and Silva had been friendly, but afterwards it was "uncomfortable" because Silva limited her conversations to work matters. Frankly, the latter appears to be embellishment, for at best there were only 2 workdays, and probably only 1, before the layoff. Time was too short for Silva to have made her uncomfortable in the manner she described. Here too, I discredit Adams. Thus, paragraphs 6(n) should be dismissed.

Ed Monteiro

The complaint alleges that sometime in mid-February, Production Manager Ed Monteiro threatened employees with the loss of various benefits if the Union won the election. In support of this allegation, the General Counsel cites the testimony of employees Eleanor Curiel and Stephanie Henry. Curiel testified that about 2 months before the layoff she had an occasion to speak with Monteiro in the print and development quality control line. She said that Stephanie Henry and Dora Costa later joined the conversation. According to Curiel, Monteiro said, "Yeah, this Union is really something. They come over here in their big old Cadillacs. You know where they get their money, with their high union dues." Curiel countered that she knew for a fact that the Union's dues

[9] Respondent's status as a subsidiary of a British corporation was common knowledge. The employee handbook describes that ownership.

[10] Silva said it was not until shortly before the hearing that she learned the cafeteria phone could even be used for outside calls.

were not high. She was aware of the amount because her husband was a union member. She said she told Monteiro that "getting a union in here would be good because the employees needed better medical benefits." She said at that point Costa entered the conversation and asked about Respondent getting on the Kaiser Health Plan. Monteiro replied there was a waiting list for Kaiser. Curiel then left the conversation, but Henry joined it. Curiel could not pay close attention to it thereafter because she was busy with her work but did hear Monteiro say something about pizza parties and not being able to get off early on holidays or being able to change departments if the Union came in. Henry testified that Monteiro said, "If the Union got in there that we would not be able to have pizza parties no more or to get off work early on holidays . . . and that we would not be able to work in other departments if there was no work in our department." She said he remarked that employees would have to pay union dues and therefore would take home less money. She did not remember Costa saying anything during the conversation. Costa was not asked about it.

Monteiro testified he did not really know Curiel or Henry by name, although he might recognize them.[11] Accordingly, he did not remember a specific conversation with them. He did say that he was once asked if pizza parties would be eliminated if the Union came in. He said he replied it was not a fringe benefit and therefore was not negotiable[12] but did not know if the Company would continue or discontinue the practice. He remembered this conversation as occurring in the cafeteria over coffee. He denies that he said to employees that union dues meant less take home pay.

He also recalls a conversation regarding Cadillacs but says it occurred in the parking lot when union organizers were distributing literature. He says someone pointed at a Cadillac and he remarked it was pretty and he wished he owned one. He says there was no other discussion regarding Cadillacs. He denies that he told anyone at any time that they would lose their pizza parties or that they would also lose their right to go home early on Fridays.

In view of Henry's specific recollection as partially corroborated by Curiel and taking into consideration Monteiro's demeanor and vagueness over the matter, I shall credit Henry. Accordingly, I find that Monteiro implied that certain employment perquisites or conditions would be lost in the event employees selected the Union.

Randy McMills

The complaint alleges that sometime in mid-March Personnel Manager McMills told employees not to discuss union matters without his prior clearance. In support of this allegation, the General Counsel relies on the testimony of gold-plater Maudie Gabriel. She testified that once in March she had been attempting to handcopy a company campaign letter posted on the bulletin board in order to give it to Teamsters organizer Ward Allen. Silva saw her and told her she did not have to copy it; she could just go to McMills and ask for a copy. Gabriel did so. When she arrived at McMills' office, lead union activist Roland Jacobs was already there with someone else. She said McMills told her to come in because whatever he was saying to Jacobs, it was for her also. Gabriel, like Jacobs, was a visible force within the plant organizing on behalf of the Union. Gabriel says McMills said, "He don't want me talking about that Union on company time, and that it was—if I had anything to say about the Union, come to him, talk to him, discuss it with him first, and that—it was lots of trouble on the production line . . . I'm saying this to help you out."

McMills testified that the whole incident began when Roland Jacobs and his supervisor, John Reddoch, decided they needed clarification regarding the extent to which Jacobs could engage in union activity within the plant. Both Jacobs and Reddoch had come to his office and he was explaining the rule when Maudie Gabriel appeared in the doorway. He agreed he invited her inside, saying that what he was about to say was for her benefit, too. McMills testified that Jacobs had asked "what he was allowed to do in the campaign, at what time could he do it, and before work, after work, break? But what if someone was talking to him during working time and stopping him, as he had been stopped, and saw other people doing that. Could he do that? . . ." At that point Gabriel arrived and was swept into the conversation. While McMills' testimony is not as clear as it might be, it is apparent that he said employee campaigning could occur in the plant before work, after work, during breaks, and lunches but that during work Jacobs was supposed to be working. McMills readily admits, however, that there was no rule against talking while working. He did not, however, address that portion of Gabriel's testimony relating to his allegedly requiring her to seek his approval before engaging in union activity.[13]

In his affidavit McMills denied that he had "a meeting" with Gabriel and Jacobs; to me he explained his denial saying he did not consider the conversation to be "a meeting in the formal sense" since it occurred on an happenstance basis. I accept McMills' explanation for his statement in the affidavit. However, the credibility conflict here is not easy to resolve. Both Gabriel and McMills appear to be honest and candid. And, while it is true that McMills did not specifically deny Gabriel's testimony with respect to the prior clearance matter, there is a substantial likelihood that she did not understand the context in which McMills was talking to Jacobs. Jacobs and Reddoch had come for a clarification of the rule regarding in-plant organizing and it seems likely that McMills, who is a genial fellow, would have encouraged them or Gabriel, too, to return in the event further clarification was required. Thus, it is not unlikely that Gabriel misunderstood what was really being said. That would certainly explain McMills' failure to specifically deny her testimony.

In this regard, I note that there is no rule prohibiting employees from talking on the job about union matters

[11] Witnesses were sequestered during the hearing; Monteiro testified days after the employees in question.

[12] It appears that the Company occasionally threw pizza parties for its employees when they met certain production standards.

[13] Jacobs did not testify. He could not be served with a subpoena and the General Counsel withdrew some allegations of the complaint with respect to him. Reddoch did not testify either.

or any other topic that employees might choose to discuss. It does appear, that if conversations, whether about union organizing or anything else, reached the point where production was affected, interdiction would be appropriate. That is simply a common sense rule which allowed employees great flexibility regarding topics of conversation. There being no rule prohibiting "union talk" it seems unlikely that McMills would tell employees prior clearance was necessary. Moreover, union activity was permitted in nonwork places and at nonwork times.

Therefore, considering all the probabilities with the fact that Gabriel was not present when the conversation began and taking into account McMills' failure to specifically deny, I am nonetheless unable to find that the General Counsel has proven by a preponderance of evidence that McMills propounded a directive to Jacobs and Gabriel telling them they needed prior clearance from him before they could engage in union activity in the plant. Most likely Gabriel misunderstood. Accordingly, this allegation, paragraph 6(i), should be dismissed.

Jone Stevenson

The complaint alleges that during March and April, day-shift silver-plating Supervisor Jone Stevenson interrogated employees about their union sentiments and support and also threatened to terminate her own employment if employees selected the Union as their representative. The General Counsel called Stevenson as an adverse witness with regard to these allegations. She testified that during March and April she commonly discussed the Union with the six or so employees under her supervision. Usually these discussions came up in the context of commenting upon the most recent union flyer which had found its way into the plant. She said she did not ask her employees what their feelings were toward the Union nor did she ever tell anyone, meaning an NLRB investigator, that she had done so. She admits asking employees if they felt the Union would really accomplish what they thought it would.

She denied saying she would quit if the Union came in but testified:

> Well, the only thing that I had said was that after about two or three meetings that were held with the employees and being told what could happen and what couldn't happen—I made a statement to my friends—not pertaining to them at all but just to myself—that if the union came in I had found out prior to my statement that I would not be able to vote—which at the beginning—when this whole thing started—I didn't know whether I would or wouldn't. I didn't know that much about unions. I wanted to learn about unions just as much as anybody else. That the statement I made—after I found out that I would not be involved was that I would try it—I would work there—I would stay and try it. But I was told that people that were not for a union—that do not belong to a union—[it] is a little rougher on them. And I made my statement because I have two kids at home that I'm raising by myself. And I have a lot of pressures at home. And I didn't feel that I wanted to stay at a job that was going to add me [sic] pressures on my job too. And that was the statement I made.

In her affidavit (G.C. Exh. 16) she said that she first heard about the Union when it first began organizing, as chief union organizer Roland Jacob's wife, Edna, worked in Stevenson's department. It was a common topic of conversation there. She said in her affidavit, "I have discussed my opinion about the union in conversations with people on the subject, I have never stopped people and asked them what they thought of the union. I have asked them while in conversations with them." Later, in her affidavit, she said, "I never voiced the opinion that Plessey might close if the union won. I did say I would probably quit if the union won. I would not be in the union and I've heard that unions make it rough on nonunion people in union shops. . . ."

The General Counsel points to Stevenson's admissions in her affidavit and asserts that nothing further is required by way of proof. Respondent argues that the context in which the statements were made is crucial, citing *KDEN Broadcasting Company, a wholly owned subsidiary of North America Broadcasting Company, Inc.*, 225 NLRB 25, 29 (1976), where an administrative law judge, with the approval of the Board, said, "statements must be viewed and evaluated in terms of the entire setting and not in isolation." I agree that the context in which the statements were made is significant. Stevenson testified on cross-examination that the friends to whom she was referring were Bonita Martinez, Ethel Smith, and Rosie Simon *nee* Smith. These individuals, although employees, were quite close to Stevenson. Indeed, Stevenson spent Thanksgiving dinner with the Smith family. Moreover, according to Stevenson, the four have met at lots of places such as bars, volleyball games, and similar events. Commonly, they saw each other every night after work as well as on weekends. Their close relationship apparently brought Stevenson the knowledge that Ethel Smith was an undecided voter and that Bonita Martinez had decided to vote against the Union.

Recognizing that Stevenson is a single parent, is a working supervisor who works alongside these employees and further recognizing that she had learned from Leimgruber and perhaps other sources that she was unlikely to be included in any bargaining unit or have any voting rights, I view her trepidation toward a system change, which unionization might be reasonably foreseen to bring, as quite reasonable. Thus, Stevenson's conversations with her close friends who were also coworkers does not seem likely to have had a coercive effect upon them and any questions she may have asked of them regarding what they felt the Union could or would do were no doubt taken as legitimate inquiries by a curious, but not unaffected, coworker. Certainly it was not Stevenson's intention, though her intent is not significant, to influence the pro or anti union sentiments of her friends. In this context, I find that the questions she asked of them were free of coercive impact. The allegation should be dismissed. Compare *Audiovox West Corporation*, 234 NLRB 428, 434 (1978), and *B & G Chrysler-Plymouth,*

Inc., and its successor Bill George Chrysler-Plymouth, Inc., 186 NLRB 282, 284 (1970).

With respect to her alleged threat to quit in the event the employees chose the Union as their representative, her live testimony quoted above sufficiently describes her point of view. I doubt her comments can be seen as reasonably likely to have influenced the votes of the employees who heard the remark. They were well aware of her circumstances as a single parent struggling to make a living and knew she had enough difficulties at home without adding more on the job. Her statement that she had heard that unions make it rough on nonunion people in unionized plants is not without some basis in fact, although she may not have understood that such conduct is generally aimed at fellow bargaining unit members, rather than individuals outside the unit such as herself.[14] Even so, she said she would give it a try before she made her decision to quit. Considering all these factors, I am not persuaded that her statement was a specific threat to quit or that it had any likelihood of coercively infuencing the union sentiments of her close friends. I also note the case cited by the General Counsel, *Murcel Manufacturing Corp.*, 231 NLRB 623, 645 (1977). There, the Board found that a threat to quit by a plant manager constituted an unlawful threat of "detrimental change in working conditions." Assuming that Stevenson's statement was a threat to quit, I fail to see what he "detriment" to the employees would be. Surely a working supervisor's departure would be less detrimental to working conditions generally than the departure of a plant manager. But there is no reason to assume that Stevenson's departure would cause Respondent financial hardship or risk or that Stevenson would be replaced by someone to whom her supervisees would be unable to adjust. The case is, therefore, distinguishable. Accordingly, I recommend this allegation be dismissed, too.

Rosemary Haro

It certainly is accurate to say that leadperson Rosemary Haro became quite bitter toward employees organizing for the Union. At least some of her resentment was triggered and later exacerbated by some extremely bad manners on the part of employee organizers who even obtained official union support. Although there is disagreement over the date, at one point Haro and employee organizer Maudie Gabriel had a conversation regarding what the Union could do for employees. Gabriel, unable to answer all of Haro's questions, invited her to attend a union meeting at her home one Saturday.[15] According to Haro, when she arrived she learned the meeting had been cancelled because, Gabriel told her, certain employees would not attend since Haro was to be present. While Gabriel explained the incident to me differently and more innocently, nonetheless Haro perceived the cancellation as a personal snub. Her antiunion reaction thus becomes quite understandable. By early April, the Union had pegged Haro as a supervisor and even went so far as to publically accuse her of treachery and racism in one of its flyers. (Resp. Exh. 123.)

Having created Haro, a rank-and-file employee, its enemy, the Union now points to her alleged misconduct to prove Respondent's antiunion attitude. The remaining allegations regarding independent violations of Section 8(a)(1) are alleged to have been committed by her. I have previously found that leadpersons generally, and Haro specifically, are not supervisors within the meaning of the Act. Accordingly, Respondent is chargeable with Haro's alleged misconduct only if she somehow became an agent of Respondent as defined by Section 2(13) of the Act. That subsection states that the question of whether or not the acts of the putative agent were actually authorized or subsequently ratified shall not be controlling in deciding that question. There is no evidence in this record that Haro was authorized to engage in management-type activity of any kind.

Furthermore, although employees were suspicious of her and some believed she was somehow aligned with management, neither belief was well founded. The reason for the employees' suspicion is the fact that she took her job as a leadperson more seriously than the other leadpersons. Haro appeared to me to be a more strong-willed individual than other leadpersons who testified, Kathy Adams and Mary Portteus. She was no doubt regarded as "tougher" than they.[16] Furthermore, her leadership had been attained via a slightly different route than was usually followed. Most often leadpersons were promoted from within their own department. Haro had come from quality control and had a library background; yet in September 1979 she was appointed leadperson of the silver line. There, her presence was intermittent due to manpower needs, requiring her to continue to spend time in the library.

That fact alone gave her wider access to the plant than other leadpersons. She was more likely to have come in contact with employees in other departments and consequently had more opportunity to see employees slacking off. The General Counsel makes no contention that Haro's September 1979 appointment as a leadperson was in any way improper or influenced in any way by the union organizing; indeed no such contention could reasonably be made since the organizing did not begin until January 1980. Thus, the employees' perception of Haro being aligned with management is only a product of their resentment because she had been appointed a leadperson outside the normal promotion route, because she was in a position to see more employee transgressions to remedy, and because she required closer adherence to the work rules than did the other leadpersons. It was not until she actually purchased and distributed T-shirts in late March that she did anything

[14] Sec. 8(b)(1)(B) of the Act recognizes that unions may even engage in misconduct toward supervision and prohibits it in certain circumstances. Thus Stevenson's fear had some legitimacy.

[15] Gabriel says the meeting was scheduled for March 29. By then, however, Haro had already purchased the antiunion T-shirts and was actively against the Union. I do not believe Gabriel would have invited her to the meeting after Haro had so committed herself. Haro says the invitation was before her February 25 through March 20 absence for surgery. It seems probable that Haro's recollection is the more likely, although Saturday, March 22, still prior to the T-shirts, is a possibility.

[16] Once, in the plating department, Haro, the silver leadperson, observed some of Adams' gold line employees goofing off and said something to them. Adams took offense and told her to mind her own business. Haro did so.

which "aligned herself" with management in a way that might make her Respondent's agent. Thus, I shall recommend dismissal of those allegations in the complaint regarding Haro's conduct prior to the last week in March. Accordingly, I recommend dismissal of the following subparagraphs of the April 29 complaint: 6(c), (d), (f), (j), and (k).

I am, however, not persuaded that Haro's purchase of the T-shirts made her Respondent's agent. She was not specifically authorized to do so, though Silva was present when she made the decision to buy them. But the shirts' slogans, "Bloody Hell—No Union" and "Hey, Union!" are not unfair labor practices. Compare *Nice-Pak Products, Inc.*, 248 NLRB 1278, 1284 (1980), where a supervisor who encourage an employee to "tell her friends" she was against the Union was found not to have violated Section 8(a)(1). Similarly Silva's conduct may have encouraged Haro to buy the shirts so she could "tell all her fellow employees" of her views. That being the case, all Silva could have ratified or condoned was Haro's free speech—guaranteed at the minimum by Section 7 of the Act. Since Respondent did not approve unlawful conduct on Haro's part, her status never changed

Despite my decision here that Haro was not an agent by virtue of the T-shirt matter, I shall, nonetheless, deal with those incidents which followed. They include Haro's involvement on April 21 with the circulation of a petition for employees to disclaim support for the Union and an allegation that on May 8 she unlawfully interrogated an employee. The employee involved on both occasions was Ruth Charlotte.

When the enlarged day shift commenced in early April, Haro was appointed leadperson in the library. That selection was consistent with her earlier skills; moreover, the day shift already had a silver plating leadperson. According to Charlotte, McMills had told her to report to the library to work under Haro as her "boss." She said that when she did, Haro told her, "I guess you know that I am the boss now because I want you to know that there are a lot of things going to be changing around here because I am the boss . . . things will change round here because now I am the Boss." Moreover, Charlotte said that Haro remarked that she was going to put coworker Becky Reynold "in her place."

Both McMills and Haro deny saying Haro was to be "boss." Even if they did say that, clearly Haro possessed no actual authority greater than that normally possessed by a leadperson. Moreover, in the vernacular, a leadperson is only a "straw boss," a phrase sometimes shortened simply to "boss,"[17] often midly sardonically. Either way, it is the authority actually possessed, rather than the word which controls. Clearly, the word "boss" is ambiguous and hardly conclusive of supervisory authority. Moreover, the library was under the direction of print and develop Supervisor Joyce Bradshaw. Under the circumstances, I cannot accept the General Counsel's assertion that McMills or Haro herself considered her to be a supervisor in the library.[18] Nor has Haro's nonagency status been charged by any of this evidence.

With this in mind, Charlotte testified that on approximately April 21 she and Jean Meniktos were working in the library when quality control employee Bel Dodge came in with a file folder and gave it to Haro. Charlotte remembers Dodge told Haro to "keep it quiet" and then left. Haro took the folder, opened it and started calling people over. In the folder was (G.C. Exh. 13) a petition stating that signatory employees did not want a union and asking the Union to stop further activities at Respondent. An examination of the petition shows that, before Charlotte signed it, 47 others had done so. She was followed by Meniktos, Haro, and several others who were likely to have been near the library at that time. Ultimately, 75 employees signed the petition. The first signature is that of Dodge, although a statement at the end of the document was written by someone else. While I do not profess to be a holographic expert, the note at the end appears to have been written by Shirley Amorfini, whose handwriting is distinctive.

In any event, according to Charlotte, during this period Haro obtained the signatures of approximately 7 to 10 people, including Mary Portteus and Pacita Lavarias as well as one Javier.[19] Charlotte quotes Haro as telling her and others, "Sign this paper. It is for to stop the union from coming in." Charlotte did so. She also said she expressed some reluctance to do so, but signed it when Haro told her "You better sign it or I will throw you out." Charlotte admits Haro was being sarcastic with that remark.

A few minutes later, Charlotte complained to fellow employees that she should not have signed the document. Apparently word got back to Haro because she returned and asked if Charlotte felt she had been coerced into signing it. Charlotte replied she did, whereupon Haro then offered to have Charlotte's name removed from the list. Charlotte accepted the offer and Haro telephoned someone else in the plant telling that individual to remove Charlotte's name from the sheet. The petition received in evidence does not show Charlotte's signature to have been stricken.

Charlotte testified that she had observed Lavarias signing the petition at Haro's request. According to Charlotte, Lavarias asked Haro when the night shift would start again because she did not like working days. Charlotte said Haro answered, "Well, we have to wait 3 months after the election so the union won't say it was because of them." Charlotte asked Haro to repeat what she had said, and Haro did so. Haro however denies any reference to waiting for 3 months after the election. She said she answered Lavarias' question regarding night-shift resumption by replying she did not know.

[17] I do not suggest that "straw boss" is a phrase used in the plant. There is no evidence to that effect. In point of fact the two were speaking Spanish and Charlotte says Haro used the word "jefe," Spanish for "boss." My purpose is to illustrate the opposite meanings of the word.

[18] The General Counsel asserts, relying on Charlotte's testimony, that Haro exercised supervisory authority by limiting Becky Reynolds' movement within the plant. Assuming that that was the cause, such a direction is well within the normal authority of a nonsupervisory leadperson who is obligated to make certain that work continues. Haro had no authority to discipline Reynolds, only to ask her to stay. Discipline rested with the supervisor.

[19] The petition does not contain the signature of any "Javier" in the array of signatures near Charlotte's.

I note that the General Counsel did not call Lavarias, the direct victim, as a witness. Thus, her recollection is unavailable to me. As Charlotte becomes, at least partially, an eavesdropper, I view her testimony as more infirm than Haro's denial.

With respect to the allegation accusing Respondent through Haro of unlawfully soliciting employees to sign the antiunion petition, once again there is no evidence that Respondent is legally responsible for its circulation. It appears that the petition was originated either by Bel Dodge or Shirley Amorfini, both rank-and-file employees. It is signed by at least one other leadperson, Mary Portteus, and appears to have been circulated surreptitiously. Haro is only one of at least three individuals who circulated it. When it came to management's attention, General Manager Burton issued a memo to all of Respondent's employees in which he stated, "While I appreciate your gesture, I must strongly suggest this is not the way to deal with your frustrations. When an election is held on April 29, everyone will have an opportunity to vote *NO* and give these outsiders their walking papers." Burton's rejection of the petition as a vehicle to express antiunion sentiment constitutes a disavowal of that document and a disavowal of its circulation including Haro's connection to it. In any event, absent a specific showing that it had been authorized by Respondent in the first place, it must be presumed to have been circulated by the rank-and-file employees themselves. Haro, like any other rank-and-file employee, was privileged to have been involved in it. The allegation should be dismissed.

The final allegation against Haro alleges that she unlawfully interrogated Charlotte on or about May 8. On May 7 Burton issued a letter to employees explaining that the Union had withdrawn its request to proceed to an election. In it he stated, "Now one of [the Union's] inside activists is seeking additional card signatures from our Spanish employees. Why do they need more cards signed since an election had already been ordered by the NLRB?" Charlotte said on the following day, Haro asked her and Meniktos who that individual could be. Neither Charlotte nor Meniktos answered and, according to Charlotte, Haro continued to ask them throughout the day. As it happened, the card solicitor was probably Charlotte since she had some union authorization cards in her possession and was soliciting signatures. Haro was not asked about the incident and Meniktos was not called to testify.

Nevertheless, there is no evidence that Haro was authorized to take such action. Certainly Burton's letter did not give her such authority. If anything, she was being a busybody, but that does not suggest she was Respondent's agent. There is no evidence that Respondent ratified or otherwise condoned the conduct or even knew about it.[20] Accordingly, this allegation, too, should be dismissed.

[20] The putative principal's knowledge, or lack of it, can be critical for a determination of agency, depending on the circumstances. *John Wanamaker, Philadelphia, Inc.*, 199 NLRB 1266 (1972).

D. *The Elimination of the Swing shift*

On Friday, March 28, the swing shift was eliminated. Some employees were transferred to a newly enlarged day shift and the remainder were permanently laid off. The General Counsel contends that the decision to eliminate the shift was a direct response to the union organizing, particularly as the decision was made on March 20, the same day Respondent received a copy of the Regional Director's Decision and Direction of Election. The General Counsel contends the swing shift was selected because it was "a vocal hot bed of union activity." Respondent asserts that the shift was eliminated because it was the natural result of production problems which had arisen due to the conversion from the solvent to the aqueous photo-resist process. It also observes that conversion target dates had been consistently unmet despite ongoing revisions and that because the 1980-81 budget had been established with aqueous process cost figures, rather than the more expensive solvent process figures, combined with corporate pressures to effect the conversion, the end of the 1979-80 budget year was the natural point for the decision to be made. Respondent asserts that the decision was made on a nondiscriminatory business basis and that it would have occurred whether or not union organizing was under way. The General Counsel urges that even if that is true, Respondent nevertheless selected certain union activists for layoff when other employees should have been selected. Respondent claims it utilized objective means of selecting employees for layoff and that the employees' union activities or propensities were not factors in the selections.

While the record does not show how long Respondent has been in business at Mountain View, the 1980 layoff was the first since 1976. In 1974 and 1976, the swing shift was eliminated for significant periods of time. It is not clear when Respondent resumed the two-shift operation thereafter, but certainly the swing shift had been operating for about 4 or 5 years until its elimination in March. According to the General Counsel's brief, his *prima facie* case relies on the longevity of the two-shift operation and the asserted fact that "it was evident to all" that the swing shift was the focal point of union activity. He points to the fact that swing-shift employees commonly wore prounion T-shirts and prounion buttons, to some incidents involving a group of Filipino employees who chanted "vote union" at night-shift Production Manager Silva and the fact that other employees on that shift had engaged in "aggressive defenses" of the need for a union with either Silva or Production Manager Monteiro. There is also evidence that Silva may have been aware that the entire swing shift was expected to attend a union meeting at Maudie Gabriel's home.

However, I am not convinced that the swing shift was any more of a hot bed of union activity than the day shift. Day-shift employees also wore T-shirts and buttons. Indeed, the principal union organizer was day-shift employee Roland Jacobs. Instead of the activity being confined to one shift or the other it seems to me that it was at least equally spread between the two. In addition, the General Counsel points to evidence of alleged 8(a)(1) activity by Respondent generally to demonstrate its hos-

tility towards the Union. I have dismissed many of those allegations and he has withdrawn others. Nonetheless, there is evidence that at least some individuals in management, particularly Silva, engaged in some 8(a)(1) activity. Certainly her reaction to the Filipino employees' chants on at least one occasion was more hostile than warranted. On another occasion, however, she deliberately caused a similar reaction, principally as a joke and her hostility to that extent is somewhat ameliorated. However, when the joke situation "got out-of-hand" her appreciation of the humor evaporated. Even so, there was not, as the General Counsel contends, a massive antiunion response such as would appear from the complaint. Indeed, the hostility shown does not emanate from individuals privy to the process through which a decision as important as a shift elimination would be made. Silva and Monteiro learned of the decision only after it had been made at the corporate level. Nonetheless, based on the timing, the hostility, and the obvious likelihood that a mass layoff would destroy the Union's organizing drive, it appears to me that the General Counsel has made out a *prima facie* case that the March 28 layoff was discriminatorily motivated.[21] Since the General Counsel has made out a *prima facie* case, the burden has shifted to Respondent to show that the shift elimination was not motivated by antiunion considerations.

According to Respondent, the elimination of the night shift on March 28 was the culmination of various circumstances extending back more than a year before the Union's organizing drive. There is no question that the conversion from the solvent to the aqueous photo-resist process had begun in late 1978 when chief engineer Hull attended a conference in Pennsylvania to learn about the aqueous process. He and, subsequently, higher management became impressed with the immense cost savings to be provided by the aqueous process. The aqueous photo-resist itself was much cheaper than the petroleum-based solvents. Moreover, the aqueous coating and the material used to strip it from the sheets was, unlike the solvent and its strippers, water soluble and disposable in the public sewers. The solvent and its byproducts had to be disposed in approved dumpsters at costs up of to $20,000 per month. The cost advantages of the aqueous are obvious. Nonetheless, the aqueous process had not been perfected in late 1978 and Respondent, through engineering, hoped to do so. Its engineering department, first through Hull and then Moore, set up a conversion program through various progressive phases. First was engineering testing, followed by gradual introduction into the production process. The latter involved close engineering supervision. That was to be followed by a takeover by regular supervision. Initially, the aqueous production was targeted to be in full operation by July 1979.

However, that deadline was not met. The rejection rate was quite high due to various technical problems. More than once the production "mode" was abandoned and the aqueous process returned to the engineering stage. It was learned over a long period of time, mostly by trial and error, that the aqueous photo-resist was vulnerable to many things. First, the manufacturer did not always supply the same quality product; sometimes it was damaged in transit by freezing; viscosity was affected by slight temperature changes, therefore the thickness of the coats varied causing problems in etching speed; the ovens were not sufficiently fine-turned to guarantee uniform baking of the resist; airborne dirt and dust caused pitting as did bubbles which mysteriously appeared in the photo-resist coats. Finally, the problem was compounded by engineering turnover and the inability of Respondent to recruit qualified and trained replacement engineers.

Of necessity all the engineering was performed on the day shift and it was not until late 1979 that the night shift was even asked to complete the day shift's unfinished tasks. By late November 1979, Respondent had acquired sufficient confidence with the aqueous photo-resist that it believed it would produce a satisfactory product by reacting to the variables in the photo-resist as they appeared. Thus, in late November, Silva began receiving training for the purpose of turning some of the aqueous production over to the night shift. As part of this process, the day shift began leaving small batches of "sheets" for the night shift to run on the aqueous process. Of course, simultaneously, the night shift continued to produce with the solvent process. However, the night shift, apparently due to temperature variances in the plant, could never approach the percentage of success that the day shift could.

In December, Manager Burton was required by his corporate superiors to prepare and present a proposed budget for the 1980–81 fiscal year. Respondent's fiscal year was scheduled to begin on April 1 and the budget required advance review and approval. The budget which he submitted necessarily took into account his expectation that Respondent would shortly be fully operating with the aqueous system. He set, in a January 4 telex to his superior, mid-February as the goal for total conversation to the aqueous process.

In late January, pursuant to this goal, the night aqueous runs were increased by several hundred, but the yield was very poor. The problems of overbaking (polymerization) and pitting could not be controlled. While it cannot be said, as Respondent flatly asserts, that there was no engineering assistance on the night shift, certainly it was inadequate. Occasionally engineers would stay beyond their scheduled shifts to assist and for a 2-week period engineer Mike Gilmore volunteered to help out. However, Chief Engineer Winkle was new on the job. In

[21] It should be observed that even the timing is not as strong as the General Counsel asserts. He notes that the decision to make the layoff was made by Burton on March 20, the same day the Decision and Direction of Election was received. Yet, the Direction of Election must have been expected. The Union had stipulated to a production and maintenance unit. There were some minor disputes with respect to the inclusion or exclusion of certain employees, but on its face the unit was an appropriate one. Any knowledgeable labor relations representative, such as Leimgruber, would have know that an election would soon be directed. There were no procedural impediments to the petition and little likelihood that the petition would be dismissed for lack of a showing of interest. Thus, when the decision was actually issued, it would have been no surprise and therefore no particular impetus for elminating the shift. Had Respondent wished to destroy the union organizing drive by the drastic action of eliminating a shift, it need not have awaited the Regional Director's decision.

addition, on February 1, engineer Nelson resigned, leaving Respondent with only three engineers. In early March it hired a recent chemistry graduate, Chang, and in early April hired another individual with a chemistry degree, Pan. Neither Chang nor Pan technically fulfilled the engineering requirements but, according to Personnel Manager McMills, were the best they could get given the background required and the heavy competition for employees in the electronics industry in the Santa Clara Valley. On March 31, it hired a third individual, Reed, in the same capacity. It was estimated that none of these three could be trained in less than 6 to 9 months.[22]

Thus, it is clear that, because of engineering turnover, inexperience, and opposition to night work,[23] the night shift had a serious disability in dealing with the new process. Both the direct testimony of management officials such as Burton, Monteiro, and Silva, as well as some corroborating testimony from employees, demonstrates the truth of Respondent's assertion here.[24]

Consistent with her perception, Silva wrote Monteiro a memo on January 23 complaining of her inability to handle engineering problems herself, saying that she could only produce low volumes of marginal products and asked for additional engineering support. Monteiro had her handwritten note typed and on January 31 put together his own memo to Burton in which he asked Burton to either transfer an engineer to the night shift or to consider to the prospect of going to a one-shift operation.

In addition to the engineering and budget matters, in early 1980, some of Respondent's customers, including Mostek Corporation and Texas Instruments, began complaining that Respondent was not meeting its delivery deadlines and the quality of the product was declining to the point where Mostek at least was considering disqualifying Respondent as a supplier. During December and January, Respondent was cited for three violations of the air pollution control laws. Also, there had been numerous complaints from Respondent's neighbors, particularly Vidar, a division of TRW, Inc.

All of these considerations were pressing General Manager Burton at approximately the same time. The solution to each of the problems was the same: fully convert to the aqueous process as rapidly as possible. That solution was necessarily bottomed on the assumption that the aqueous process could produce good quality at an efficient rate. On February 28 Burton's corporate superior, Robert Sigwell, wrote Burton a memorandum confirming a telephone call the day before in which he asserted that Burton should consider confining manufacturing activities to one shift because of the advantages of closer control. Burton testified he did not wish to do that if he could avoid it. He hoped to be able to make the swing shift fully operational. Nonetheless, as March went by, he said he realized that he could not provide the night shift with sufficient engineering support to make it successful and still meet the deadline of the budget year. Accordingly, on March 20, he made the decision to eliminate the night shift and to staff the day shift with as many of the night-shift people who could be assimilated.

On that day, he informed Sigwell of his decision. Sigwell concurred but suggested Burton touch base with Industrial Relations Director Leimgruber in New York. Burton did so and Leimgruber immediately came to Mountain View to make certain that the decision was economically defendable. He feared the layoff would draw unfair labor practice charges. When Leimgruber arrived in Mountain View on Monday, March 23, he reviewed the situation with Burton and McMills. After concurring with them that the decision was nondiscriminatory, he discussed the manner of selection of those to be retained.

He instructed McMills to lay off employees based on considerations which were normally found in collective-bargaining contracts—i.e., length of service and/or relative skill.[25] This was manifested in the Employer's phrase, "capability."

During the remaining part of the week, Respondent began arranging for the mechanics of the layoff, keeping the decision a secret. Monteiro prepared a manning chart for an expanded day shift. McMills prepared a list of night-shift employees. On Wednesday, a meeting was conducted in Burton's office during which Monteiro attempted to list the various "capabilities" of each of the night-shift employees. He was unable to do so, because he did not know them well, for they were directly supervised by Silva. Silva was called into the office and she, from memory, began listing each of the employees' "capabilities."[26] She testified that the factors used were length of service with Respondent and length and time in a particular department. This was tempered on occasion by questions of industrial injury or illness, attendance, and her subjective view of employee attitude. The last of course did not strictly fit into Leimgruber's desire to utilize objective criteria.

For the most part, Respondent did utilize objective criteria for the retention of employees. The General Counsel only challenges a few of the selections. Respondent Exhibit 91 is the original sheet which McMills wrote down with Silva's assistance, although it was later edited slightly and typed as Respondent Exhibit 92; the principal change was the addition of hire dates.

[22] Indeed, their lack of skill is reflected in the pay rate they received. Each of them were paid at the laboratory technician rate and actually received less money than technician Pochylski.

[23] See the testimony of engineer John Stene.

[24] Respondent points to certain documentary evidence supporting the same conclusion. I have reviewed that evidence, particularly yield rates, and while I am convinced they show what Respondent said they show, it is not immediately apparent. This is due to the fact that successful material was still being run via the solvent process. The documentation does not clearly differentiate between the two.

[25] Respondent never considered "bumping" junior day-shift employees in favor of retaining more senior night-shift employees. This practice is consistent with the night-shift eliminations of 1974 and 1975. No discriminatory motive can be inferred from Respondent's following its past practice.

This did result in an apparent inequity, however, for Respondent honored pre-March 20 commitments to two or three new hires for the day shift, resulting in fewer openings for night-shift employees. Nonetheless, that, too, is consistent with the "no bumping" practice followed consistently since 1974. That inequity, therefore, is not sufficient for me to conclude that the shift elimination was discriminatory.

[26] It was not until that moment that Silva learned of the decision to eliminate the shift.

The first individual who the General Counsel challenges is Supervisor Carolyn Battle. She was hired in June 1975 and was the third most senior individual on the list. The General Counsel points out that Battle had capability in three different departments, print and develop, where she was a supervisor, stripping and pre-etch. It is clear that within the pre-etch department, she had seniority over pre-etch employees Mary McDougald, Pearlie Marron, and Frances Brown, all of whom were retained. She also had seniority over Gerarda Lat in print and develop as well as seniority over print and develop leadperson Mary Portteus. She claimed plating experience and had seniority over Ron Amorfini in the plating department. Silva had not listed Battle as having any capability in plating.

McMills explained that Battle was passed over because of the very fact that she was a supervisor and would have had to have taken a demotion to either a leadperson's or a process operator's job. Pre-etch already had a day-shift supervisor and the demotion would have involved a substantial pay decrease. From his standpoint the risk of her demoralization was too great. Moreover, he said that Portteus had been the pre-etch leadperson for 1-1/2 years while Battle had only supervised pre-etch for a few months. He said he did not give Battle the open day-shift plating supervision job because Bednarczyk had held that job on nights and Battle had not worked in plating since before the department was reorganized in 1979.

I conclude that the reasons advanced by McMills are reasonable and do not suggest discriminatory motive in any way. It is clear that Respondent simply did not have an opening for Battle at her level of achievement.

The next individual who the General Counael challenges is leadperson Kathy Adams. It is clear that Adams had the highest capability in plating than anybody on the list, but she had suffered an industrial injury in the plating department and in February had been transferred to the pre-etch department. There she was not nearly as experienced as any of the others who were retained. Thus, her capability in that department as opposed to the capabilities of those who were retained was inferior.

Similarly, Dora Costa had also suffered an industrial accident in the plating department and although she had some capability in the print and develop department, had limited herself to developing, not printing. Thus, she was not as versatile as employees who could do both.

Another individual challenged by the General Counsel is Maudie Gabriel. Gabriel was an experienced plater, both in silver and gold, although her duties primarily were on the gold line. She had complained that she did not wish to do copper plating at one point. As copper plating is a process required before either silver or gold can be plated, it was a common task in the department. Nonetheless she had been permitted to work only on the gold line. She contends that she was willing to work the copper if it meant her job. That may be so, but she had not communicated that fact to Silva by the time the decisions were being made. In any event, when a janitor's job opened in early May, McMills offered it to her and she took it. She has been employed in that capacity since.[27]

The remaining two individuals who the General Counsel challenges are Nestor Gragasin and Elmer Marmaradlo, both pre-etch employees who had seniority over the next two pre-etch employees who were kept, McDougald and Pearlie Marron.[28] Gragasin and Marmaradlo were two of the individuals who had shouted, "Union, union" at Silva during the week of March 23 and who had fully demonstrated their prounion proclivities. During February and March Silva and others had orally admonished them on a number of occasions because of their tardiness in returning to and from breaks. Frankly, in view of Silva's attitude toward them when they chanted "Union, union" at her, and in view of her admittedly angry response to them, I am not persuaded that her statement to McMills and Leimgruber during the selection process to the effect that the two had bad attitudes is sufficient to justify laying them off on that basis. It seems to me that the only thing which presented itself to Respondent which differentiated them from other employees was their "Union, union" altercation with Silva. Certainly she had taken no steps to warn them about their attendance or attitudes. When the chanting occurred, they suddenly became undesirable employees and she saw to it that they were not retained during the layoff. I find they were discharged in violation of Section 8(a)(3).

However, the fact that Silva improperly selected two employees for layoff does not assist the General Counsel in dealing with Respondent's evidence that the decision to eliminate the swing shift was nondiscriminatory. Indeed, it appears to me that Respondent has rebutted the General Counsel's *prima facie* case alleging improper motivation in that decision. It is clear to me that a number of factors were all coming to a head on or about April 1, the day the new budget period was to begin. Respondent had little or no ability to control the quality of the product being manufactured by the night shift. Burton had come to believe that with fewer individuals totally employed, although on a beefed-up one-shift basis, combined with close engineering support, it could manufacture its product more efficiently than with two shifts, one of which was unable to produce much more than scrap. In that circumstance, I conclude that Respondent has effectively rebutted the General Counsel's *prima facie* case that the shift was eliminated in response to union organizing.[29] Instead, the proof is conclusive that the decision was made for nondiscriminatory reasons. Accordingly, I shall recommend dismissal of that portion of the complaint.

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[27] The General Counsel asserts that since Maudie Gabriel's rehire occurred after the issuance of the complaint it should be viewed carefully as a possible manipulation. I have done so and conclude that manipulation is unlikely. Gabriel was 12th on the overall seniority list and the only persons with earlier hire dates who were not kept were Battle and Costa whose situations have been explained above. Respondent was well satisfied with Gabriel. When an opening occurred, it took her back.

[28] Marron's name was inadvertently left off Resp. Exhs. 91 and 92 when they were drafted but the error was caught later.

[29] Compare the factual circumstances in *Mini-Industries, Inc.*, 255 NLRB 995 (1981).

IV. THE REMEDY

Having found that Respondent has engaged in certain violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. The affirmative action shall include an order requiring Respondent to immediately offer Gragasin and Marmaradlo reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent ones. In addition, Respondent shall be required to make them whole for any loss of pay they may have suffered as a result of the discrimination against them, in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950). Interest on backpay shall be computed as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Respondent, Division of Plessey Materials Corporation, Plessey Micro Science, a wholly owned subsidiary of Plessey Inc., is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. General Warehouse, Cannery and Food Process Workers Union, Local 655, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. On or about the dates shown in this Decision, Respondent violated Section 8(a)(1) of the Act by threatening employees with layoffs if they supported the Union, and by threatening employees with loss of various benefits in the event the Union won a representation election.

4. On or about March 28, Respondent, through its production manager, Linda Silva, discharged its employees Elmer Marmaradlo and Nestor Gragasin because they voiced support for the Union.

5. Respondent has engaged in no unfair labor practices alleged in the complaint except as otherwise found above.

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record of this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[30]

The Respondent, Division of Plessey Materials Corporation, Plessey Micro Science, a wholly owned subsidiary of Plessey Inc., Mountain View, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with loss of jobs or with loss of employment-related benefits in the event they select the Union as their collective-bargaining representative.

(b) Discharging employees because they express their prounion sympathies.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Immediately offer Nester Gragasin and Elmer Marmaradlo reinstatement to their former jobs or, if their former jobs no longer exist, to substantially equivalent jobs, dismissing if necessary any employees who replaced them, without prejudice to their seniority or other rights and privileges and make them whole, with interest, for lost earnings in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Mountain View, California, plant copies of the attached notice marked "Appendix."[31] Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by Respondent's authorized representative, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[30] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[31] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."